



The Railway Association of Canada
L'Association des chemins de fer du Canada



159391

February 11, 2002

FRA-2001-11068-11

BY FAX

Docket Management System
U.S. Dept. of Transportation
Room PL-401
400 Seventh Street SW
Washington, D.C. 20590-0001
USA

FEDERAL RAILROAD
ADMINISTRATION
2002 FEB 12 AM 9:24
OFFICE OF CHIEF COUNSEL

Dear Sir/Madam:

Re: Docket Number FRA 2001-11068, Notice Number 1, 49 CFR Part 219, RIN 2130-AB39, Control of Alcohol and Drug Use: Proposed Application of Random Testing and Other Requirements to Employees of a Foreign Railroad Who are Based Outside the United States and Perform Train or Dispatching Service in the United States; Request for Comments on Even Broader Application of Rules and on Implementation Issues.

The Railway Association of Canada (RAC) represents 56 railway companies operating in Canada. Many operate cross-border including CN, CPR, VIA Rail, several U.S. Class 1 railways as well as short line railways.

The RAC has noted with interest, the Notice of Proposed Rule Making (NPRM) and Request for Comments as published in the December 11, 2001 Federal Register. This proposed NPRM would have significant implications on cross border railway operations between Canada and the U.S. As such, the RAC would like the DOT to consider the following comments:

Canadian railways make safety and security their highest priority. In the last 15 years, railway safety trends in Canada have continued to improve in all areas of measured safety performance. Canada's railways have been rated as some of the safest in the world by independent consultants and railway colleagues in other countries. Our members have accomplished this excellent safety record through compliance with various legislated safety rules and regulations (many harmonized with U.S. requirements), implementation of formal safety management systems and many voluntary programs and company policies focused on safety. Many of these activities cover requirements for employee medical fitness for duty, employee safety performance management, employee involvement in the development of industry / company safety programs and consultation with relevant labor organizations.

Docket Management System**February 11, 2002****Page Two**

The Canadian railway industry takes the issue of drug and alcohol abuse very seriously. Although Canadian law has constrained employers' use of random drug testing to help manage safety, even where safety sensitive / critical positions are involved, many other rules, regulations, company programs and drug and alcohol policies have been implemented by railways in Canada that provide excellent controls and enhanced safety regarding substance abuse.

Canadian railways operating cross-border already have pre-employment / pre-placement drug screening testing, post-accident testing requirements for operating employees and comprehensive D&A company policies. These companies also have Employee and Family Assistance Programs (EFAP) that encourage employees to voluntarily seek help and D&A rehabilitation that could result in testing / monitored back to work actions. In addition, railways strictly enforce Canadian Rail Operating Rule "G" (prohibition on the use or possession of narcotics or intoxicants, while on duty and other related clauses), at a "zero tolerance" level.

Section 35 of the Railway Safety Act mandates regular medical examinations for persons occupying safety critical positions. The Act also requires that employees and their physicians must notify the Chief Medical Officer of a railway company if a person occupying a safety critical position has a medical condition that could be a threat to safe railway operations. Last year, the Minister of Transport approved rules under the Railway Safety Act defining safety critical positions as those including locomotive engineers, conductors and rail traffic controllers. Railway Medical Rules were also approved defining the various medical assessments that physicians are specifically required to consider, one of which is "substance abuse, including abuse or dependence on alcohol, prescription drugs or illicit drugs". The RAC produced information packages on these new rules that were distributed to all physicians and affected railway companies in Canada and posted them on various stakeholders' websites.

The RAC is confident that all these industry programs and regulatory actions have resulted in a high level of secure and safe railway operations in Canada and across our common borders.

However, the RAC suggests that any new action that could raise operational safety and security to the next level, such as this proposed rule, should be seriously considered. The NPRM must be assessed on the basis of realistic risk measurement and safety benefit, multi-modal comparisons and with due consideration to the impact on north-south trade and the effective movement of goods and services between the U.S. and Canada.

Most importantly, this issue deals with Canadian law and basic human rights legislation. As such, this matter should be negotiated directly by the Governments of the United States and Canada, rather than between the FRA and Canadian railways under a rulemaking process.

Docket Management System**February 11, 2002****Page Three**

Some other issues to consider:

- Review the December 15, 1992 FRA proposal on the application of the "Omnibus Testing Act" to foreign railroads operating within the United States and related outcomes.
- Ensure that the rulemaking evaluation is done partly in the context of the NAFTA agreement, including consideration to limited distance, limited operations, limited risk and regulatory equivalency, with modal comparisons.
- Review relevant findings of NAFTA Land Transportation Standards Sub-Committee (LTSS), established and mandated to consider the compatibility of rail safety regulations related to cross border operations, and continue to utilize this Committee as part of the evaluation / decision-making process.
- Review and consider related decisions of Canadian Federal Court of Appeal, Human Rights Tribunals and Canadian Labor arbitrators.

We are aware that some of our members, including CN and CPR, are providing independent, detailed comments on this NPRM. We are aware of their views and submit a commonly shared view that this issue be carefully considered and that resolution involve significant collaboration and negotiation between our national governments.

We look forward to attending your public hearings on February 14, 2002 and participating as appropriate.

Sincerely,



W.A. Rowat
President and CEO

cc. Mr. R. Ritchie, President & CEO, Canadian Pacific Railway
Mr. P. Tellier, President & CEO, Canadian National Railway
Honourable D. Collenette, P.C., M.P.